

9-14-1994

## Resolution 1994-01-07 Required Changes to Federal Advisory Committee Act

Association of Fish and Wildlife Agencies

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### Recommended Citation

Association of Fish and Wildlife Agencies, *Resolution 1994-01-07 Required Changes to Federal Advisory Committee Act* (1994),  
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## **Resolution 1994-01-07**

### **REQUIRED CHANGES TO FEDERAL ADVISORY COMMITTEE ACT**

**WHEREAS**, during the past two decades Congressional enactments have vested in federal agencies authorities concerning certain species and uses of fish and wildlife over which the several states have legal mandates and broad trustee and police powers; and

**WHEREAS**, except for the 1972 Marine Mammal Protection Act which has preempted completely state authority for certain marine mammals, state jurisdiction is concurrent under other Congressional enactments (e.g., endangered and threatened species, anadromous fish, migratory birds); and

**WHEREAS**, on National Forests and on Bureau of Land Management administered lands, land use administration authority is vested in federal land managers while authority relating to wildlife management including the taking of fish and wildlife on such lands has been reserved expressly by Congress in the several states; and

**WHEREAS**, the several states retain basic authorities and responsibilities for the management of fish and wildlife species within their respective borders; and

**WHEREAS**, by virtue of express Congressional reservation, state jurisdiction with respect to taking of fish and wildlife is also concurrent on units of the National Wildlife Refuge System and the National Recreation Areas; and

**WHEREAS**, despite concurrent state authority and the express Congressional mandate to the Secretary of the Interior in section 6(a) of the Endangered Species Act to cooperate with the states to the maximum extent practical in implementing the Act, the US District Court in Arizona has held that a review team established by the US Fish and Wildlife Service to examine the biological status of the Mexican spotted owl was convened in violation of the Federal Advisory Committee Act, 5 U.S.C. App. 2, because the review team included a state biologist; and

**WHEREAS**, despite concurrent state authority and the express desire of Congress that the Forest Service make greater use of state fish and wildlife agency expertise on interdisciplinary teams convened under the National Forest Management Act, US Department of Agriculture legal advisors cite the Federal Advisory Committee Act to bar participation by state biologists on forest plan interdisciplinary teams; and

**WHEREAS**, cooperative endeavors between federal and state agencies which share jurisdiction with respect to fish and wildlife resources are expressly contemplated by Congress and are manifestly essential to the working of the federal system, and the Federal Advisory Committee Act was not intended to curtail such activities.

**NOW, THEREFORE, BE IT RESOLVED** that the International Association of Fish and Wildlife Agencies supports changes in federal law to exempt from the Federal Advisory Committee Act all government entities with concurrent jurisdiction over fish and wildlife resources.